submitted that a fair trial had been prejudiced because the Assessors had heard this inadmissible evidence damaging to the appellant. The learned trial Judge ruled that this evidence was inadmissible, and instructed the Assessors "to expunge the words from their minds and not to take them into account when considering their verdict".

Counsel for the appellant submitted to us that it was impossible for the Assessors to efface entirely from their minds the effect of their inadmissible evidence, and therefore the learned trial Judge should have stopped the case and ordered a new trial.

After careful consideration we have come to the conclusion that if the evidence in this case had been less strong against the appellant he would have ordered a new trial. Since, however, the appellant was convicted on his own confession, the Assessors could have come to no other conclusion than that to which they came even if the evidence to which reference has just been made had not been led by the prosecution.

Accordingly the appeal of the appellant is dismissed.

Appeal Dismissed.

MANIKAM AND ANOTHER v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J.) April 11, 1947]

Criminal Procedure Code (F.M.S.) Section 170—Joint trial held to be wrong where offences are not committed in same transaction.

In this case the two accused were tried jointly on charges of criminal trespass, but the charges alleged that the first accused committed criminal trespass on one day and the second accused committed the same offence on a different day.

Held, that as the offences were not committed in the same transaction, there should have been a separate trial of each accused.

MAGISTRATE'S APPEAL.

Ramani for appellants.

Griffith Jones for the Public Prosecutor.

Willan, C. J. :—In this case both the appellants were convicted by the Magistrate at Klang, of the offence of criminal trespass punishable under section 447 of the Penal Code, and each of them was sentenced to one month's rigorous imprisonment.

By section 170 of the Criminal Procedure Code persons may be charged jointly and tried together for the same offence or for different offences if such offence or offences are committed in the same transaction.

It is clear from a perusal of the two charges in this case that they do not arise out of the same transaction, because they allege that the first appellant committed criminal trespass on one day and that the second appellant committed the same offence on a different day.

There should have been a separate trial of each appellant. Since a joint trial was held, there has been a contravention of section 170 of the Criminal Procedure Code, and on that account I allow their appeals and quash the convictions and sentences. I order that each of the appellants be re-tried before another Magistrate.

Retrial Ordered.

YAP SOW KEONG AND ANOTHER vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J. Malayan Union, Murray Aynsley, C.J. Singapore and Bostock Hill, J.) March 27, 1947]

Evidence—Retracted Confession—Confession made by accused when in Police Custody—Request of accused to call a witness—Criminal Procedure Code, Section 144 (iv)—Courts Enactment (Cap. 25), Section 43.

In this case both the appellants appealed against their conviction on the offence of armed robbery contrary to Section 392 and 397 of the Penal Code. The sole evidence against the first appellant was a confession made by him to a Magistrate which he subsequently retracted at the trial, alleging that he had made the confession because he had been beaten by a Detective whilst in police custody. At the trial, the second appellant stated that he wished to call a witness whose name and address he gave. He had not given the name of this witness at the prelimnary enquiry, nor to the officer in charge of the prison for transmission to the Registrar, Supreme Court, as provided by Section 144 (iv) of the Criminal Procedure Code. The learned trial Judge refused this application.

Held, (1) that an accused can be convicted on his own confession even when it is retracted, if the Court is satisfied of its truth and it is not necessary that there should be corroborative evidence to support it;

(2) that when a person has been in police custody and the only evidence tendered against him at the trial is a confession, which is retracted, it is the duty of the Court to enquire into the matter with great care and satisfy itself that the confession has not been made by any inducement, threat or promise made by the Police, and that as this precaution had been taken by the learned trial Judge in this case the appeal of the first appellant must be dismissed;

(3) that, in this case, the learned trial Judge should have granted the request of the second appellant to call the witness, as he had given his name and an address within thirteen miles of the Court, even though the second appellant had not given the name of the witness at the preliminary enquiry nor to the officer in charge of the prison for transmission to the Registrar, Supreme Court, as provided by Section 144 (iv) of the Criminal Procedure Code.

CRIMINAL APPEAL.

Appellants in person.

Grattan-Bellew for Public Prosecutor.

The judgment of the Court of Appeal was given by :—

Willan, C. J. :—In this case both the appellants were convicted of the offence of armed robbery contrary to sections 392 and 397 of the Penal Code.

The sole evidence against the first appellant was a confession made by him to a Magistrate, which he subsequently retracted at the trial, alleging that he had made the confession because he had been beaten by a detective whilst in police custody.

In our view the law as to the admissibility of retracted confessions in evidence is clear, and put shortly it is that an accused person can be convicted on his own confession, even when it is retracted, if the Court is satisfied of its truth. We do not agree with those Indian decisions which lay down that before a person can be convicted on his retracted confession there must be corroborative evidence to support it.

In the case of the first appellant the evidence discloses that whilst in police custody he made a request to a responsible police office, an Assistant Superintendent of Police, that he should be taken before a Magistrate to make a confession. He made no complaint to that police officer that he had been beaten by a detective. Before the Magistrate no complaint was made regarding this alleged beating, in spite of the fact that the first appellant was carefully questioned by the Magistrate as to whether he had decided to make the confession on account of any inducement, threat or promise made to him by the police. At the preliminary enquiry, the first appellant made no reference to this beating when the confession was tendered and admitted in evidence against him. It was only at his trial that he first made any reference to this alleged beating.

The record discloses that the learned trial Judge made careful enquiry into the allegation by the first appellant that he had been beaten whilst in police custody and decided that no such beating took place.

We wish it to be known that when a person has been in police custody and the only evidence tendered against him at his trial is a confession, which is retracted, it is the duty of the Court to enquire into the matter with great care and satisfy itself that the confession has not been made by any inducement, threat or promise made by the police. Since this precaution was taken by the learned trial Judge in this case, the appeal of the first appellant is dismissed.

With regard to the appeal of the second appellant, the record discloses that after he had given evidence he stated that he wished to call a witness whose name and address he gave. His request was refused by the learned trial Judge on the ground that the second appellant had had ample prior opportunity to arrange for this witness to be called and to allow applications of this kind would unduly prolong Assizes.

Whilst it is true that the second appellant did not give the name of this witness at the preliminary enquiry, nor to the officer in charge of the prison for transmission to the Registrar, Supreme Court, as provided by section 144 (iv) of the Criminal Procedure Code, we feel that the learned trial Judge should have granted his request. It was not as if the second appellant, who was not defended by counsel, had given vague information regarding this witness. He gave his name and an address within thirteen miles of this Court as to where he could be found.

Accordingly we direct that under section 43 of the Courts Enactment (Cap. 2) the original trial Court shall take the evidence of the witness named by the second appellant, if such witness can be found, and that the evidence of such witness, together with the learned trial Judge's opinion on the case considered in the light of that additional evidence, shall be forwarded to this Court.

Order Accordingly.